IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 211 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAKINABEN WD/O SULEMAN IBRAHIMBHAI - Appellant(s)
Versus
DEVABHAI SAVABHAI & 11 - Defendant(s)

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Appearance :
MR SN SHELAT for Appellant(s) : 1, 1.2.1, 1.2.2,1.2.3
NOTICE SERVED for Defendant(s) : 1 - 12.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 14/08/2006

ORAL JUDGMENT

Present Appeal has been filed by the appellants, original-plaintiffs [hereinafter referred to as 'the plaintiffs'] challenging the judgment and decree dated 30th June 1988 passed by the learned Judge, City Civil Court at Ahmedabad in Civil Suit No. 1013 of 1983 in dismissing the said suit.

2. The plaintiffs filed the aforesaid Civil Suit No. 1013 of 1983 in the City Civil Court at Ahmedabad against the defendants for injunction seeking to restrain them from making any construction in any portion of 20 feet approach road between sub-plots No. 1, 2 and 3 and Final Plot No. 236 of Town Planning Scheme No. 11 in Rakhial, Ahmedabad. It was further prayed to restrain the defendants from causing any obstruction in the said 20 feet approach road.

3. It was averred in the Plaint that the property bearing Final Plot No. 236 admeasuring about 27466 sq.yds. In Town Planning Scheme No. 11 in Rakhial, Ahmedabad was of the ownership of the plaintiffs and defendants No. 8 to 12, i..e. of the ownership of Chandbhai Bros. & Co. That by registered document dated 12th July 1972 the said property came to be divided into 14 sub-plots between Sulemanbhai Ibrahimbhai, and defendants No. 8 to 12. It was further averred that out of the said sub-plots, sub-plot No. 3 and 14 fell to the share of the plaintiffs. It was further averred that in the entire land as approach road of 20 ft. Between sub-plot No. 12 and 13 has been provided connecting which there is a 10 ft. Common road for going to the factory between sub-plot No. 3, 4, 5, 6, 7 and 8 and both these roads admeasuring 470 sq.yds. It was further averred that the said road was kept as a private road of the plaintiffs and the defendants No. 8 to 12. It was averred that the

defendants No. 1 to 7 except defendant No.2 were formally working in the factory for preparing prickers as workers and therefore they were given the open land free of cost for erecting kachcha huts for their residence so that they can stay near the factory. It was averred that the said factory is closed since 1972. It was averred that thereafter the workers were asked to vacate the huts but under one pretext or the other they were not vacating the same and the eviction proceedings were also pending against some of the occupants. It was averred that the defendants No. 1 to 7 tried to take law into their own hands, intend to raise a construction taking support of the wall in 20 ft., approach common road and thereby they wanted to make construction on the open land of plot No.3 and they wanted to cause obstruction to the plaintiffs in ingress and egress through 20 ft., approach road which was for taking the goods to and from the factories which are in the plots held by the plaintiffs, and inspite of the request made to them not to put up any construction they were likely to put up construction, and therefore the aforesaid suit came to be filed for the aforesaid reliefs.

4. The Suit was resisted by the defendants by filing Written Statement being Exh. 15 refuting the claim of the plaintiffs. It was contended that the suit has been filed as a device to compel the defendants to vacate their huts. It was contended that against defendant No.1 and other tenants eviction suit had been filed and

the plaintiffs had not succeeded in getting possession of the residential huts and hence imaginary suit came to be filed. It was contended that originally the land belonged to one owner and all the tenants were occupying their respective huts, that after the partition the huts fell to different owners and that the dispute was between the landlords and the tenants and hence the City Civil Court had no jurisdiction to try and entertain the Suit. It was further contended that the defendants and other persons have been residing in the suit land as tenants and have been using the open land portion in front of the huts. It was further contended that as the plaintiffs tried to forcibly dispossess the defendants and other occupants by hiring anti-social elements and committed breach of peace, the defendants approached the police for protection; that on 13th March 1983 plaintiff No.3 threatened the defendants to vacate the huts and that is why the defendants approached the police for protection and have filed the complaint. It was further contended that there was no talk about raising any construction in the open land as alleged and the suit has been filed only with a view to harass the defendants. It was further contended that no construction has been done or intended to be done by the defendants and no cause of action has arisen for filing the suit. The learned Trial Judge raised the Issues at Exh.15.

5. On behalf of the plaintiffs, plaintiff No.3 Firdeshbhai Sulemanbhai came to be examined at Exh.17; witnesses Rohitkumar Krupashankar Dave and Hamidhusain Mohmad Husain Shaikh came to be examined at Exhs. 29 and 35. On the side of the defendants, defendant No.4 came to be examined at Exh. 41 and one Kalubhai Ukabhai came to be examined at Exh. 42. The documentary evidences consisted of registered Partition Deed dated 12th July 1972 at Exh.20, Commissioner's Reports dated 14th March 1983 and 21st September 1984 at Exh. 42 and 32 respectively and the plan was got prepared by plaintiff at Exh. 37. The learned trial Judge after considering the documentary as well as oral evidences dismissed the suit by holding that the plaintiffs have failed to prove that defendants No. 1 to 7 have tried to encroach upon the common road of 20 ft. width. Being aggrieved and dissatisfied with the judgment and order of the learned trial Judge in dismissing the suit, the original-plaintiffs have preferred the present Appeal.

6. Shri Harshadray A. Dave, learned advocate has vehemently submitted that the learned trial Judge has materially erred in overlooking the fact that the report of the Commissioner at Exh. 31 shows that the defendants were not in possession of the land in question. It is further submitted that the learned trial Judge has committed an error in holding that the disputed structure was in existence for the last 40 years. He has further submitted that the

learned trial Judge has overlooked the fact that there was no exclusive possession of the passage land and it was competent to pass a decree as prayed for by the plaintiff and therefore he requested to allow the present appeal.

7. It is required to be noted that in the Written Statement itself it was submitted on behalf of the defendants that in the open land of plot No.3 defendants did not propose to make any construction and they have been using the said land by putting Cots for sleeping at night time and that they were using the same since last more than 40 years. The factum of using the said land by the defendants was disputed by the plaintiff. It has come on evidence that to the East of 20 ft. wide road there is sub-plot No.3 of plaintiff, and to the West of the said road there was sub-plots No. 1 and 2. That in sub-plot No.1, there is Patel Soap Factory and the said factory has a compound wall. It has come in the evidence of defendant No.4 Exh. 41 that as the area of residential huts was insufficient Chandbhai had permitted the defendants to use the disputed land and sheds have been raised with gunny-bags, jute etc on the disputed land. Thus, this aspect of evidence that the super-structure raised by the defendants were adjacent to compound wall of the said Patel Soap Factory. It is also required to be noted that earlier there was one final plot which came to be subsequently divided into sub-plots.

8. Considering the fact that on the prior day of filing of the suit a complaint came tobe filed and there was a quarrel between the plaintiffs and the defendants and in the said incident the plaintiffs had also sustained injury. It appears that there was a quarrel between the plaintiffs and the defendants on 13th March 1983 regarding removal of huts from the disputed land. Now, considering the aforesaid circumstances the learned trial Judge has rightly held that the defendants were in possession of the disputed land. Considering the other circumstances and the evidences, the learned trial Judge has rightly disbelieved the Commissioner's report and not giving any more weightage to the Commissioner's report for coming to the conclusion that at least on 13th March 1983 the structures were very much in existence. Now, considering the evidence on record and the above finding, the learned trial Court has rightly held that the suit cannot be on the basis of apprehended injury since the act of putting up the structures touching the compound wall of the Soap Factory is already completed and therefore there will be no question of granting any relief to the plaintiffs and accordingly the trial Court has rightly dismissed the suit by further holding that the defendants can be said to have claimed possessory title over the disputed land and the remedy for the plaintiff would be certainly not by way of the suit of the present nature. On going through the Judgment and decree as well as the oral as well as the documentary evidences, this Court is in complete

agreement with the reasoning and finding of the trial Court while dismissing the civil suit.

9. For the foregoing reasons, the appeal fails and is accordingly dismissed. However, there will be no order as to costs. Ad-interim relief stands vacated.

[M.R. Shah, J.]

RMR.